

STATE OF MICHIGAN
IN THE SUPREME COURT OF THE STATE OF MICHIGAN

JUDITH PORTER AND
ROBERT PORTER
Plaintiffs/Appellants,

Supreme Court No. 147333
Court of Appeals No. 306562,306524
Lower Court No. 11-012799-DZ

v.

CHRISTINA HILL,
Defendant/Appellee

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APPELLEE'S RESPONSE TO PETITION FOR LEAVE TO APPEAL

147333
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JUDGMENT OR ORDER APPEALED FROM

The Appellee agrees that the Order from which appeal is sought is the Circuit Court Order correctly granting Summary Disposition on the Porters' Complaint for Grandparent Visitation, and the Court of Appeals decision affirming that Order. The Appellants are requesting that this Court determine that the Circuit Judge and the Court of Appeals have erred as a matter of law. Appellants argue that the Court of Appeals gives a whole new meaning to the definitions of "grandparent" and "natural parent", and that this Court should step in to prevent this. This is simply not true. The statute as written makes sense: grandparents can petition for grandparent rights. The Porters no longer have a legal relationship with these children. Their son Russell lost his parental rights due to severe physical abuse of his daughter. Once Russell's rights were terminated, and for the year prior to his death, the Porters had no right to demand visits with these children. After Russell's death, the Porters filed a complaint for grandparent visitation. They had no legal standing to do so, as Russell was not a parent to these children at the time of his death. Their "grandparent rights" did not revive on the death of their son, when they did not exist on the day before.

The Circuit Judge did indicate in his oral opinion that this legal issue was something the Court of Appeals should review, but both counsel had indicated in chambers that they would take this matter up on appeal, since it was a question of law. The Court of Appeals did issue a well reasoned, published opinion on June 11, 2013, upholding the Circuit Court's decision. At this time, there is no reason for the Supreme Court to review this issue, as any confusion on this matter has been resolved by the Published Decision by the Court of Appeals.

There is no substantial question of law here, and no reason to believe that the Court of Appeals and the Circuit Judge committed an error of law in this matter. This decision is not clearly erroneous as a matter of law, and the Supreme Court does not need to issue a ruling.

This case does not involve legal principles of major significance to Michigan jurisprudence. The statute is clearly written. The Appellants try to analogize their current situation to the statutes and case law requiring Russell Porter to pay child support from the time his parental rights were terminated until his death, but that is not allowed. The jurisprudence in this area is clear, and was set by the Michigan Supreme Court many years ago, as stated in the following Brief. There is no reason for the Supreme Court to revisit those prior decided cases at this time.

STATEMENT OF QUESTIONS INVOLVED

- I. IS THERE A NEED FOR THE SUPREME COURT TO RULE ON THIS ISSUE, AS THE COURT OF APPEALS HAS ISSUED A CLEAR RULING?

Appellant answers: Yes

Appellee answers: No

- II. DO GRANDPARENTS HAVE LEGAL STANDING TO SEEK A GRANDPARENTING TIME ORDER IF THEIR CHILD (THE FATHER OF THE SUBJECT MINORS) HAD HIS PARENTAL RIGHTS INVOLUNTARILY TERMINATED DUE TO HIS PHYSICAL ABUSE OF ONE OF THE MINORS?

Appellant answers: Yes

Appellee answers: No

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RESPONSE TO PETITION FOR LEAVE TO APPEAL

Christina Hill, by her counsel, Susan J. Tarrant, states the following as her Response to Petition for Leave to Appeal:

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Plaintiffs have moved for Grandparenting Time with the two minor children, Robert Porter, who is now 5 years old, and Addison Porter, who is now 4 years old. Christina Hill (F/K/A Porter) does not believe Plaintiffs have standing to require grandparenting time, or that it is in the best interests of the children to have such time thrust upon them. She also believes it is strongly against public policy to set forth a precedent allowing the grandparents to require grandparenting time after their child's parental rights to the minor children were terminated due to severe abuse of a minor child.

The Circuit Court in this matter found that there were grounds to dismiss under MCR 2.116 (C) as there is no jurisdiction over these minors to decide an issue of grandparent rights, and these Plaintiffs lack the capacity to sue for Grandparenting time as the Plaintiffs are not the legal grandparents of the named minors. Under MCR 2.1116 (C) (8) and (10) these Plaintiffs have failed to state a claim on which relief can be granted. They are not legally the grandparents of these minor children, and there is no section of the statute which allows them to force Ms. Hill to provide them time with these children if she does not believe it is in their best interests. An appeal was taken of the Circuit Court's decision to grant a Motion for Summary Disposition on the grounds that the Porters have no legal standing under the statute to seek an order requiring grandparent visitation. The Court of Appeals, in it's published Opinion on this matter, concluded

that “it would be anomalous for the Legislature to authorize a court to terminate a person’s parental rights based upon abuse, but then to somehow “revive” those rights for the purposes of grandparent visitation.” (Porter v. Hill opinion at 2).

Defendant is the mother and sole legal parent of the minor children. The biological father of Robert and Addison Porter was Russell Porter. The parental rights of Russell Porter were terminated in Saginaw County Family Court on February 4, 2010 due to Russell Porter fracturing the skull and ribs of Addison Porter when she was approximately 4 weeks old. Christina Hill (Porter) became the sole legal parent at the time of that Order. Russell Porter committed suicide on April 6, 2011, over one year after his parental rights were terminated. During his last year Russell Porter had no parental rights and no right to visitation. He also had no right to arrange for visits between his parents and the minor children. Judith and Robert Porter are the legal parents of Russell Porter. After Russell Porter’s death, they filed a petition seeking an order requiring Ms. Hill to provide them with grandparenting time with the minor children. Appellants cannot claim to be entitled to an order requiring Ms. Hill to allow visits between these children and the Porters when Russell Porter had not been the legal father, and had no right to visitation with these children, for at least a year before his death.

**ARGUMENT I: AT THIS TIME, THERE IS NO NEED FOR THE SUPREME COURT
TO RULE ON THIS ISSUE, AS THE COURT OF APPEALS
HAS ISSUED A CLEAR RULING.**

The Circuit Judge did indicate in his oral opinion on September 26, 2013, that this legal issue of standing of the grandparents after their child's parental rights were terminated due to abuse, was something the Court of Appeals should review. (Tr. Of 9/6/2013 at 11). As a result of the appeal in this matter, the Court of Appeals did issue a well reasoned, published opinion on June 11, 2013, upholding the Circuit Court's decision. The Circuit Judge did receive the affirmation he was seeking that he had correctly read and interpreted the statute. At this time, there is no reason for the Supreme Court to review this issue, as any confusion on this matter has been resolved by the Published Decision by the Court of Appeals.

Since this is an appeal from a court decision regarding custody disputes, the Child Custody Act of 1970 clearly provides that "To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court **shall be affirmed on appeal** unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCLA 722.28.(emphasis added.) In this case there were no factual findings, and there is no clear legal error. This matter has already been reviewed by the Court of Appeals. After looking at the record and hearing oral argument in this matter, the Court of Appeals, in a published decision, agreed that the Circuit Judge was correct in concluding that the Porters do not have standing to seek an order requiring grandparent visitation. There is no clear legal error here, and the Circuit Court and the Court of Appeals "shall" be affirmed under current law.

ARGUMENT II: GRANDPARENTS DO NOT HAVE LEGAL STANDING TO SEEK A GRANDPARENTING TIME ORDER IF THEIR CHILD (THE FATHER OF THE SUBJECT MINORS) HAD HIS PARENTAL RIGHTS INVOLUNTARILY TERMINATED DUE TO HIS PHYSICAL ABUSE OF ONE OF THE MINORS.

Not everyone is given the right to request “parenting time” with someone else’s children. The statute allowing for grandparenting time, MCLA 722.27b (1) provides that “A child’s **grandparent** may seek a grandparenting time order under 1 or more of the following circumstances:” and the statute lists circumstances where grandparents can seek an order from the Court requiring grandparenting time. The term “grandparent” is defined in the Child Custody Act of 1970, MCLA 722.22(e) as “a natural or adoptive parent of a child’s natural or adoptive parent.”

It is presumed that the Plaintiffs are seeking grandparenting time under Section 7b(1) which provides that “A child’s grandparent may seek a grandparenting time order under 1 or more of the following circumstances:

(c) The child’s parent who is a child of the grandparents is deceased.”

These children have only one legal parent, Christina Hill. Russell Porter was not the legal parent of these children at the time of his death. If Russell Porter was not the parent at the time of his death, his parents cannot derive grandparenting time from his rights. The Porters do not fit the definition of grandparent under the statute. If the legislature had wanted to include grandparents after the parent’s parental rights were terminated, the Legislature had the knowledge and the means to make that exception. For instance, MCLA 722.27b(5) provides that if two fit parents sign an affidavit stating they oppose grandparenting time, the court shall dismiss a motion or order seeking grandparenting time, but it specifically excepts a situation where a parent has released parental rights to allow for a stepparent adoption from this section of the statute. Instead,

MCLA 722.27b(10) provides that “ A grandparenting time order entered under this section does not create parental rights in the individual or individuals to whom grandparenting time rights are granted. The entry of a grandparenting time order does not prevent a court of competent jurisdiction from acting upon the custody of the child, the parental rights of the child or the adoption of the child.” (Emphasis added). The Legislature clearly contemplated that if a court terminated parental rights, or allowed adoption of a child, the grandparenting time would no longer exist. In this case, the termination occurred over a year before the request for grandparenting time. There is no legal basis for awarding a grandparenting time order after termination of parental rights.

Under the statutory definition, Judith and Robert Porter are not the legal grandparents of these children, since Russell Porter was not the legal parent of either of these children at the time of his death. The grandparents are seeking a right to visitation which derives from Russell Porter’s right to see his children. However, due to the injuries that Russell Porter caused to Addison Porter, his parental rights to both children were terminated on February 4, 2010. He had no right to visit those children from February 4, 2010, through his death on April 6, 2011. He had no right to updates on their progress in school or medically, no say in their future, no right to have any input into their care and upbringing. He lost that right as a result of his abuse of his baby daughter. Prior to the termination of his parental rights, he could have arranged for visits between his parents and these children. Subsequent to the termination of his parental rights, he could not arrange for or insist on visits between his parents and these children. Now the Porters are arguing that although they had no right to insist on grandparent visitation while their son was alive, somehow subsequent to his death, that right magically was granted by the statute. Since he was

not legally the parent of these children at the time of his death, and Russell Porter had no right to see these children at the time of his death or arrange visits with his family, the Porters have no standing to request grandparenting time from this Court after Russell Porter's death. They are not recognized under the law as grandparents with the right to file for visitation. If their rights derive from Russell Porter's rights, then their right to request grandparent visitation was lost when his parental rights were terminated. When Russell was alive the Porters had no right to force Ms. Hill to allow visits. That right did not appear on Russell Porter's death.

The Court should also be aware that at no time did the Circuit Court involved in the divorce case rule on or have jurisdiction over parenting time for Russell Porter, since the divorce was filed after the Petition to Terminate Mr. Porter's rights was filed, and the court in the divorce case deferred to the juvenile court regarding visitation and custody. Once the Juvenile Court terminated Mr. Porter's rights, the Court in the divorce action recognized that there was no standing for Mr. Porter to request any visitation in that divorce action. That case would not provide any grounds to request grandparent visitation due to the termination of Mr. Porter's parental rights as a result of his abuse of his baby daughter. The Judgment of Divorce in that case was entered prior to Russell Porter's death, so that section of the grandparenting time statute would not apply. There was no attempt by the grandparents to intervene in that divorce action to seek grandparenting time while that action was pending.

Counsel for the Appellants argues that because Russell Porter was ordered to pay child support after his parental rights were terminated and the children applied for Social Security benefits after his death, that means that the Porters should be considered grandparents for the purposes of this statute. This completely ignores the difference between a right to visitation and a

responsibility to support your child. This distinction was clearly made in the case of In Re Beck, minors, 287 Mich. App. 400; 788 NW 2d 697 (Mich. Ct. App. 2010). In that case, Mr. Beck's parental rights were terminated, but he was still ordered to pay child support. Mr. Beck argued that if his parental rights were terminated, his support should end. The Court of Appeals noted that "Had the Legislature intended that a termination of "parental rights" would also include a termination of "parental responsibilities," such as the responsibility of a parent to pay child support, it could have used specific language to convey that intent. Moreover, rights and responsibilities are separate and distinct concepts. A "right" is a "power, privilege, or immunity secured to a person by law." Black's Law Dictionary (7th Ed.) A "responsibility" on the other hand, is a "liability" Id. The responsibility to pay child support and the retention or exercise of parental rights are not interdependent. Michigan law does not, for example, unequivocally hold (nor would it be in the best interests of a child to do so) that a fit parent should be prevented from visitation with his or her child simply because the parent is unable to pay child support." In the matter of Beck minors, *supra* at 403.

On appeal, the Michigan Supreme Court affirmed the Beck decision and elaborated on the explanation. The Supreme Court stated that "The plain language of the termination statute, MCL 712A.19b, only implicated "parental rights". Thus, when parental rights are terminated, what is lost are those interests identified by the Legislature as parental rights. In other words, the terminated parent loses any entitlement to the "custody, control, services and earnings of the minor..." FN20. Because nothing in the language of MCL 712A.19b affects the duty of support articulated in MCL 722.3, the obligation remains intact. In re Beck, minors, 488 Mich 6, at 15; 793 NW2d 562 (Mich. S. Ct. 2010)

The Court went on to state in footnote 23 that “In holding that the parental obligation to support may continue after parental rights have been terminated, we wish to reiterate that the terminated parent retains absolutely no rights with respect to the children and no right to interpose himself in the lives of the children. See, e.g., Hunter v. Hunter, 484 Mich. 247, 269, 771 NW2d 694 (2009) (stating that the termination of a parent’s parental rights permanently severs the parent’s right to be a parent and make decisions regarding his or her child’s upbringing”). In the absence of any statutory authority, the terminated parent may not claim *any* right to see or contact the children attendant to the payment of support.” (Emphasis in original). Beck, *supra*, FN 23.

Both the Court of Appeals and the Michigan Supreme Court have clearly decided that the right to see one’s children is separate and distinct from the obligation to support those children. Appellants cannot rely on the duty to support minors in order to bootstrap an order requiring grandparent visitation, as the courts have already clearly made that distinction. Russell Porter’s right to see his children was terminated on February 4, 2010. Any order for grandparenting time would need to be derivative of Russell Porter’s right to see his children. That right was taken away, for good reason. It cannot be revived due to his death, and the analogy to his duty to pay support has clearly been dismissed by both the Court of Appeals and the Supreme Court.

Counsel argues at length that because the courts do provide that Mr. Porter’s obligation to support his children was clear, that somehow that retained his parents’ right to ask for grandparent visitation. That ignores the clear distinction that this Court has made between the responsibility to support these children, which clearly continues after termination of his parental rights and even after his death, and his right to have contact with the children. Mr. Porter lost the right to have contact with these children: he retained the responsibility to support them. The fact that he still

had a support obligation does not mean that the right to grandparent visitation was retained.

Should the matter come to trial, Defendant disagrees that the Plaintiffs have had a strong and loving relationship with her children, or that it would be beneficial or in their best interests to have contact with Plaintiffs. However, Plaintiffs cannot establish any standing under the Michigan statute to file this petition. Defendant believes she should not have to justify her choice to protect her children when these Plaintiffs have no standing to request visitation.

As a matter of public policy, the Court needs to consider whether to accept this petition for Review to re-write this statute to allow grandparent visitation after termination of parental rights. If the statute is to be re-written, it should be done by the Legislature. The statute itself clearly does not provide for grandparent visitation after termination of parental rights. If the statute were re-written to allow this, it puts children who have already been subjected to abuse at further risk. Unfortunately, abuse of children tends to be generational. Ms. Hill has no way to know whether her children would be safe in the care of the Porters, especially in light of some of the statements made by Russell Porter before his death. This court should not interfere in her rational choice to protect her children. She has already faced major injuries to one of her children: she should not have to take what she perceives to be an unreasonable risk when the Porters have no legal standing in this matter. Should the Court re-write this statute and allow the Porters to have standing to request visitation, that opens the door for many other grandparents who would not be appropriate caregivers to request the same. Courts do not terminate parental rights lightly. Once that is done, the remaining parent and the children should be able to move on with their lives. They should not be continually dragged back into this morass of legal arguments when it is clear that there are no derivative rights left here.

The statute regarding grandparenting time must be strictly construed. This is very similar to the case of DeRose v. DeRose, 469 Mich 320; 666 NW2d 636 (2003), the case that overturned the prior grandparent visitation statute in Michigan. A paternal grandmother applied for grandparenting time under the prior statute after the father of the children was sentenced to 12 to 20 years in prison for first degree sexual conduct of a sibling. The mother, Theresa DeRose, concluded it was not in the best interests of her children to allow grandparent visitation. The Michigan Supreme Court overturned the then current grandparent visitation statute, finding it unconstitutional. The Michigan Supreme Court relied on an interpretation of the United States Supreme Court in the matter of Troxel v. Granville, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49(2000). The Michigan Supreme Court stated "We believe, guardedly, that a majority can be found in the Court's handling of the second issue that the Washington Supreme Court discussed, namely, the statute's overbreadth that caused it to violate parental liberty interests that are protected by the due process guarantees of the United States Constitution..... One of the liberty interests the Court identified, after characterizing it as perhaps the oldest such interest, is the "interest of parents in the care, custody and control of their children.... " Troxel, *supra* at 65, quoting Meyer v. Nebraska, 262 US 390, 399, 401; 43 S Ct 625; 67 L Ed 2d 1042(1923) and Pierce v. Society of Sisters, 268 US 510, 534-535; 45 S Ct 571; 69 L Ed 1070 (1925).Further, the opinion reaffirmed that it is presumed that "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to interject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's child." Troxel, *supra* at 68-69. See Reno v. Flores, 507 US 292, 304; 113 S Ct 1439; 123 L Ed 2d 1(1993)." DeRose, *supra*, at 328.

CONCLUSION


A parent's right to decide how to properly raise their own children should be honored. There is no evidence that Christina Hill is not an adequate or appropriate parent. The current statute provides that she is allowed to make rational choices for her children, and does not have to fight in court over who gets to visit with her children. Since Russell Porter was not the legal father of the children at the time of his death, and had no rights toward them whatsoever, his parents cannot derive rights greater than Russell Porter's rights under the law. Judith and Robert Porter have no legal standing or right to request grandparenting time from this Court under current Michigan law, and both the Circuit Court and the Court of Appeals correctly decided this issue. This Request for Leave to Appeal should be dismissed.

REQUEST FOR RELIEF

WHEREFORE, Christina Hill, by her attorney, Susan J. Tarrant, respectfully requests that the Court deny the Request for Leave to Appeal, and uphold the Court of Appeals and the Circuit Court's decision in this matter, as the Appellants do not have standing to request grandparent visitation.

Dated: July 22, 2013

Respectfully Submitted,


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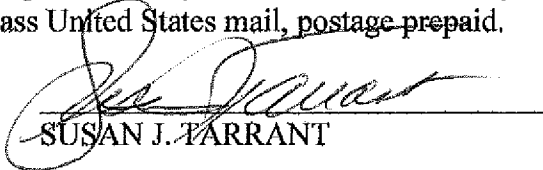
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PROOF OF SERVICE

Susan J. Tarrant hereby states that on July 22, 2013 she served copies of Appellee's Response to Petition for Leave to Appeal upon Colin M. Dill, 4855 State Street, Suite 4, Saginaw, MI 48603 and the Clerk of the Court of Appeals at PO Box 30022, Lansing, MI 48909-7522, and the Clerk of the 10th Circuit Court for Saginaw County at 111 S. Michigan, Saginaw MI 48602 by placing the documents in the first class United States mail, postage prepaid.

July 22, 2013



SUSAN J. TARRANT